

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 THIRD JUDICIAL DISTRICT AT ANCHORAGE

FILED
 STATE OF ALASKA
 THIRD JUDICIAL DISTRICT
 2009 DEC 30 PM 2:50
 BY: CLERK TRIAL COURTS
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JASON QUIRARTE, through his legal guardian, Rita Campbell, on behalf of himself and all others similarly situated,

 Plaintiffs,

 vs.

 BILL HOGAN, in his official capacity as Acting Commissioner of the Department of Health & Social Services, and ROD MOLINE, in his official capacity as Director of the Division of Senior and Disabilities Services,

 Defendants.

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JAN 06 2010

ATTORNEYS GENERAL'S OFFICE
 JUNEAU

Case No. 3AN-08-8122 CI

STIPULATED SETTLEMENT AGREEMENT AND ORDER

The parties, by and through their respective counsel of record, hereby stipulate and agree as follows in full settlement of the above-entitled action:

RECITALS

Plaintiff Jason Quirarte is a disabled Medicaid beneficiary and a participant in both the State of Alaska's Personal Care Attendant ("PCA") and Home and Community-Based Services Waiver ("Waiver") programs.

The purpose of the PCA program is "to enable an individual, of any age, whose needs would otherwise result in placement in an acute care hospital or nursing

facility or loss of that individual's employment solely related to activities of daily living (ADL) to remain at home or prevent job loss." 7 AAC 43.750.

The PCA program provides eligible recipients with assistance in performing the various ADLs, such as bathing, dressing, toileting, eating, transfers, and care of the mouth, hair, skin, fingernails and toenails, as well as assistance with various instrumental activities of daily living (IADLs), such as housekeeping, shopping, laundering bed linens and clothing, meal planning and preparation, assistance with taking vital signs, bandage care, administering routine medications, and travel to and from medical and dental appointments. *See* 7 AAC 43.752.

7 AAC 43.755(a)(14)(A), known as the "shared living rule," provides that participants in the State of Alaska's PCA program may *not* receive assistance with IADLs if "the recipient or anyone else in the household is capable to perform or financially provide the IADL for the recipient."

The Waiver program provides disabled, low-income Alaskans with long-term health care services, commensurate with nursing home care, in their homes and communities so they can avoid institutionalization. Waiver services include private duty nursing, homemaker services, adult day care, transportation, personal emergency response systems, counseling, environmental modifications, respite services, chore services, medical supplies and equipment, and training in a variety of independent living skills. *See* 42 C.F.R. §440.180; 7 AAC 43.1041.

The Waiver program also has a “shared living rule,” codified at 7 AAC 43.1042(c)(1), which denies chore services to a Waiver recipient if “the recipient or anyone else in the household is capable of performing or financially providing for them.”

Plaintiff Jason Quirarte’s PCA is his mother and legal guardian, Rita Campbell.

Plaintiff Jason Quirarte and Ms. Campbell live in the same household.

Plaintiff Jason Quirarte was denied chore services by the State of Alaska under its Waiver program, and assistance with IADLs under its PCA program, pursuant to the “shared living” rules in 7 AAC 43.1042(c)(1) and 7 AAC 43.755(a)(14)(A).

Plaintiff Jason Quirarte filed the above-entitled class action, on behalf of himself and all others similarly situated, on June 10, 2008, claiming that the “shared living rules” violates the comparability requirement of the federal Medicaid Act, codified at 42 U.S.C. §1396a(a)(10)(B)(i). Plaintiff Jason Quirarte sought in this lawsuit declaratory and injunctive relief against the defendants including, *inter alia*, a repeal of the State’s aforementioned “shared living” rules.

The parties, through their respective counsel of record, have engaged in arms-length negotiations and have now reached a settlement of all issues in this case including, *inter alia*, the state’s agreement to repeal the aforementioned “shared living” rules.

The plaintiff, by and through the Northern Justice Project, and defendants, by and through Chief Assistant Attorney General Stacie L. Kraly, hereby agree to the settlement of all of the claims raised in this action on the following terms and conditions:

1. Effective March 1, 2009, defendants discontinued denying chore services or assistance with IADLs pursuant to the “shared living” rules codified at 7 AAC43.1042(c)(1) and 7 AAC 43.755(a)(14)(A).

2. No later than twelve months from the date of this agreement, and in accord with the requirements of the Administrative Procedure Act, the defendants shall take steps necessary to amend 7 AAC 43.1042 and 7 AAC 43.755 to remove the current “shared living” rules to ensure that those regulations comply with the comparability requirement of the federal Medicaid Act.

3. Defendants provided notice of the change in policy related to the shared living rules on or about March 1, 2009.

4. Between (March 1, 2009 and until the above regulatory amendments are approved as set forth in paragraph 2, above) the State has allowed any Medicaid recipients who were denied IADL or chore services by the State pursuant to the “shared living” rules to submit to the Department of Senior and Disabilities Services, through their PCA agency or care coordinator, the *Addendum to Authorize IADL/Chore Hours*. Upon receiving the *Addendum to Authorize IADL/Chore Hours*, the defendants shall immediately authorize IADL or chore hours in the following amounts:

A. Individuals who are recipients of PCA services but not Waiver service shall receive four hours of IADL services per week until their next annual assessment.

B. Individuals who receive services under the Children with Complex Medical Conditions (CMCC) Waiver program or Mental Retardation and Developmental Disabilities (MRDD) Waiver program shall receive five hours per week of chore services until their next annual assessment.

C. Individuals who receive services under the Older Alaskans (OA) Waiver program or Adults with Physical Disabilities (APD) Waiver program shall receive 10 hours per week of chore services until their next annual assessment.

D. Individuals who are eligible for *both* PCA and Waiver services shall have the choice to receive either IADL hours under the PCA program or chore services under the Waiver program.

5. Defendants agree that plaintiff is the prevailing party in this case and is thus entitled to an award of full reasonable attorney's fees and costs under 42 U.S.C. § 1988(b). Accordingly, defendants agree to pay \$14,000 (full costs and fees), plus interest at the rate of 3.50% from the date of this order, to plaintiff's counsel not later than September 1, 2010. Plaintiff agrees that this payment shall constitute full settlement for all costs and fees arising out of this case.

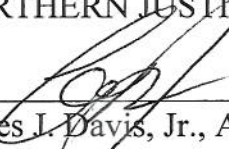
6. This agreement is entered into under the regulations and process that exist based upon the April 1, 2006 effective date of the personal care regulations and

policies and procedures adopted thereafter. Nothing in this agreement precludes the defendants from amending or changing the PCA service via regulation so long as those changes are made pursuant to the Alaska Administrative Procedure Act. However, the defendants agree that they will not enact another shared living rule under any new regulatory scheme that does not comport with federal law binding on the state. Nothing in this agreement precludes plaintiffs or counsel for plaintiffs from making a future challenge to any changes made to plaintiffs' service or to the relevant regulations.

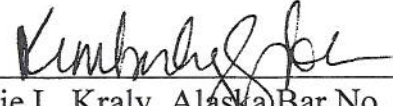
7. This action shall be DISMISSED WITH PREJUDICE as of the date of this Order. However, if the defendants fail to promulgate the regulatory changes required under paragraphs 2 of this Settlement Agreement, plaintiffs may move and shall be entitled to have this case reopened.

DATED December 29, 2009 at Anchorage, Alaska.

NORTHERN JUSTICE PROJECT

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IT IS SO ORDERED.

Date: 12/31/09



MARK RINDNER
Superior Court Judge

I certify that on 1-4-10 a copy
of the above was mailed to each of the following at
their addresses of records:

Dudukyan Kralley-Ag



Administrative Assistant